

REMARKS

Claims 1-34 are currently pending. Claims 35-79 were previously canceled without prejudice. However, Applicant reserves the right to pursue the subject matter of the canceled claims by separate prosecution of this or another related application. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

Claim Rejections Under 35 U.S.C. 103(a)

In the Final Office Action dated July 19, 2006, the Examiner rejected claims 1-8, 11-14, 17-32, 34-38, 40, 64-67, 69-75, and 77-79 under 32 U.S.C. § 103(a) as allegedly being over Oman (US Patent Number 2,001,810) in view of Buchalski (US Patent No. 5,816,484). The Examiner also rejected claims 9, 10, 33, 39, 68 and 76 further in view of Suh (US Patent No. 5,106,882). Applicant respectfully traverses these rejections.

Independent claim 1 recites, *inter alia*, that the flaps are integrally connected to the rim along a fold line. The Examiner interprets the step (89) of Bulchalski to be a “rim” and the living hinge (80a, 82a, 84a, 86a) to be the “fold line” as claimed. However, according to this interpretation, the flaps of Bulchalski can not be integrally connected to the rim (step 89) along the fold line (living hinge 80a, 82a, 84a, 86a) as claimed. Indeed, Bulchalski explicitly states in column 5, lines 20-23 that the side walls extend upwardly and terminate at an “upper linear edge formed into respective linear living hinges 80a, 82a, 84a, 86a”. Further Bulchalski expressly states in column 5, line 35 that the step (89) is formed in each side wall adjacent to, but not along, the corresponding hinge. Figure 7 clearly depicts the step (89) spaced vertically from the corresponding hinge wherein the living hinge (86a) is shown at a vertically higher position on the page than step (89). Hence, the step (89) is spaced from the corresponding hinge, and thus the flaps can not be considered to be “integrally connected” to the step as suggested by the Examiner. Given that Bulchalski clearly states that the living hinge (86a) is formed at the termination of the sidewalls (i.e. at the top or mouth of the container) and step (89) is positioned below the termination of the sidewall, it is clear the step (89) is displaced vertically below the living hinge (86a). Accordingly, the flaps of Bulchalski are not “integrally connected” to the step along the living hinges as claimed in independent claim 1.

Independent claim 15 recites, *inter alia*, that both first and second major flaps are configured such that a portion of each flap “overlies the rim when the container is in the closed position”. Similarly, independent claim 29 recites, *inter alia*, all flaps (i.e. both major and minor) are connected “to the outer periphery of the rim”.

As discussed above the step (89) of Bulchalski is spaced vertically below the living hinge. Indeed the only feasible interpretation of Figure 7 of Bulchalski is that living hinge (86a) is positioned at the termination of the sidewalls, while the step (89) is vertically offset below the living hinge. Consequently, Buchalski does not disclose or suggest both major flaps configured to overly the rim when in the closed position, as recited in independent claim 15. Likewise, for the reasons discussed above, Buchalski does not disclose or suggest each flap being connected to an outer periphery of the rim, as recited in independent claim 29.

Accordingly, neither Oman nor Buchalski, whether considered separately or in combination, disclose or suggest each and every feature of independent claims 1, 15 and 29. As such, Applicant respectfully submits that claims 1, 15 and 29 are allowable over the prior art of record. Accordingly, Applicant respectfully requests that the rejection to claims 1, 15 and 29 be withdrawn.

Moreover, dependent claims 2-14, 16-28, and 30-34 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, claims 2-8, 16-23, 30-32 recite features of the flaps, while claims 9-14, 24-28, 33-34 recite features of the container. At least for these reasons, dependent claims 2-14, 16-28, and 30-34 are further allowable over the prior art relied upon by the Examiner.

Formal Request for Interview

Applicant submits that the present application is in condition for allowance at least for the reasons set forth herein. If the present application is not considered to be in condition for allowance by the Examiner, and pursuant to M.P.E.P. § 713.09, Applicant requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant's Attorney Daniel Hulseberg may be reached at telephone number (212) 408-2594 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

CONCLUSION

Applicant submits that this Response to Final Rejection does not raise new issues for consideration or necessitate the undertaking of any additional search of the art by the Examiner. This Response to Final Rejection should therefore allow for immediate action by the Examiner.

Applicant also submits that entry of this Response to Final Rejection and the accompanying remarks would place the present application in better form for appeal, should the Examiner dispute the patentability of any of the pending claims.

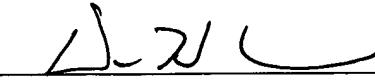
On the basis of the foregoing Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that this Response to Final Rejection be entered by the Examiner and the rejections of the pending claims be withdrawn.

The Examiner is invited to contact the undersigned at (212) 408-2594 if any additional information or assistance is required.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077409.0513. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, Applicant requests such extension and authorizes the charging of the extension fee to Baker Botts L.L.P. Deposit Account No. 02-4377, Ref. No. 077409.0513.

Respectfully submitted,

9/19/06
Date


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